IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL REVISION APPLICATION NO.217 OF 2007

Shri Mohan Arlappa Dharmakamble
dead through his legal representatives:
Smt.Jamunabai Mohan Dharmakamble & Ors. : Applicants
(Orig.Plaintiffs)

V/s.

Sou. Manda Haridas Dhanagarmali : Respondent
(Orig. Defendant)

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Ms Leena Patil i/b. Mr.P.M.Pradhan for the applicants.

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**CORAM : S.A.BOBDE, J.**

DATE : SEPTEMBER 26, 2007.

**P.C**.

1. This Civil Revision Application is preferred against the concurrent findings of the two Courts below that the applicants are not entitled to a declaration that they are licensees-tenants of the defendants in the suit premises and are, therefore, not entitled to an injunction. The learned counsel for the applicants strongly relied on exh.78 which is a diary maintained by one of the applicants which allegedly contained entries of rent paid by the applicants to the respondents. According to the learned counsel, that should have been treated as proof of

tenancy by the Courts below. It is not possible to accept this submission in the circumstances of the case. The diary produced by the applicant no.2 is in his own handwriting and, in any case, there is no reason to reject the reasoning of the lower appellate Court that merely because it is shown that certain amounts are paid to the respondents and the record of that is maintained in a diary, it will not establish the relationship of a landlord and tenant ip so facto. It must be remembered that the dispute has arisen under the Bombay Rent Act which provides that the agreement of licence in writing would be conclusive of the facts stated therein. Though it is true that the evidence of a lessor quality can be produced by the parties, it is equally true that not accepting the said evidence cannot be said to be a material irregularity within the meaning of section 115 of the Code of Civil Procedure.

2. There is no merit in the Revision Application which is hereby dismissed.

S.A. BOBDE, J.